

Notice of Allowability	Application No.	Applicant(s)	
	10/023,066	FALCO, SAVERIO CARL	
	Examiner	Art Unit	
	Elizabeth F. McElwain	1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to phone interview of 4/19/05.
2. ☒ The allowed claim(s) is/are 41-45 and 49-51.
3. ☒ The drawings filed on 29 April 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).**
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input checked="" type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date <u>4/20/05</u> . |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

EXAMINER'S AMENDMENT

1. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Lynne Christenbury on April 19, 2005.

The application has been amended as follows:

IN THE SPECIFICATION

The first paragraph of the specification has been replaced with the following:

This is a divisional of Serial No. 08/823,771, filed on 3/24/97, now U.S. Patent 6,459,019, which is a divisional of Serial No. 08/474,633, filed on 6/7/95, now U.S. Patent 5,773,691, which is a continuation-in-part of Serial No. 08/178,212, filed on 1/6/94, now abandoned, which was the national filing of PCT/US93/02480, filed on 3/18/93 and which is a continuation-in-part of Serial No. 07/855,414, filed on 3/19/92.

IN THE CLAIMS

The previous listing of the claims is replaced with the following:

Claims 1-40 (cancelled)

Art Unit: 1638

Claim 41. (previously presented) A plant comprising in its genome two foreign nucleotide sequences which cause seeds obtained from said plant to accumulate lysine at a level of at least ten percent higher than do seeds of a plant which do not comprise said foreign nucleotide sequences in its genome wherein the foreign nucleotide sequences each comprise a nucleic acid fragment, said fragments being different from each other, and said fragments each being operably linked to a plant seed specific promoter and said fragments are (a) a nucleic acid fragment encoding an aspartokinase which is substantially insensitive to lysine inhibition and further wherein said fragment is operably linked to a plant chloroplast transit sequence, and (b) a nucleic acid fragment encoding a dihydrodipicolinic acid synthase which is substantially insensitive to lysine inhibition and further wherein said fragment is operably linked to a plant chloroplast transit sequence.

Claim 42. (previously presented) The plant of claim 41 wherein said plant is selected from the group consisting of rapeseed, soybean, and corn.

Claim 43. (currently amended) Progeny plants from the plant of claim 41 ~~or 42~~ wherein said progeny plants comprise in their genome the two foreign nucleotide sequences of the plant of claim 41.

Claim 44. (currently amended) Seeds obtained from the plants of ~~claims~~ claim 41 ~~or 42~~ wherein said seeds comprise in their genome the two foreign nucleotide sequences of the plant of claim 41.

Claim 45. (currently amended) Seeds obtained from the progeny plants of claim 43 ~~wherein said seeds comprise in their genome the two foreign nucleotide sequences of the plant of claim 41.~~

Claims 46-48 (cancelled)

Claim 49, (new) The progeny plants of claim 43 wherein said plants are selected from the group consisting of rapeseed, soybean, and corn.

Claim 50. (new) The seeds of claim 44 wherein wherein said plants are selected from the group consisting of rapeseed, soybean, and corn.

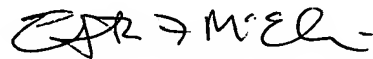
Art Unit: 1638

Claim 51. (new) The seeds of claim 45 wherein said plants are selected from the group consisting of rapeseed, soybean, and corn.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth F. McElwain whose telephone number is (571) 272-0802. The examiner can normally be reached on increased flex time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson can be reached on (571) 272-0804. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Elizabeth F. McElwain, Ph.D.
Primary Examiner
Art Unit 1638

EFM